

**Illinois Department of Revenue
Regulations**

Title 86 Part 100 Section 100.2430 Addition and Subtraction Modifications for Transactions with 80-20 Companies
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TITLE 86: REVENUE

**PART 100
INCOME TAX**

Section 100.2430 Addition and Subtraction Modifications for Transactions with 80-20 Companies

- a) For taxable years ending on or after December 31, 2004, IITA Section 203 (as amended by Public Act 93-0840) requires a taxpayer, in computing base income, to add back deductions allowed in computing federal taxable income or adjusted gross income for interest expenses and intangible expenses incurred in transactions with a person who would be a member of a unitary business group with the taxpayer, if not for the 80-20 test. Public Act 93-0840 also amended IITA Section 203 to allow subtraction modifications that would insure that the addition modifications do not result in double taxation, and to provide exceptions in instances in which requiring the addition modifications would not be appropriate.

- b) Definitions
 - 1) Dividend Included in Base Income. "Dividend" means any item defined as a dividend under 26 USC 316 and any other item of income characterized or treated as a dividend under the Internal Revenue Code, and includes any item *included in gross income under Sections 951 through 964 of the Internal Revenue Code and amounts included in gross income under Section 78 of the Internal Revenue Code.* (IITA Section 203(a)(2)(D-17) and (D-18), (b)(2)(E-12) and (E-13), (c)(2)(G-12) and (G-13), and (d)(2)(D-7) and (D-8)) A dividend is included in base income of a taxpayer only to the extent the dividend is neither deducted in computing the federal taxable or adjusted gross income of the taxpayer nor subtracted from federal taxable income or adjusted gross income under IITA Section 203.

 - 2) Foreign Person. A "foreign person" is any person who would be included in a unitary business group with the taxpayer if not for the fact that 80% or more of that person's business activities are conducted outside the United States. (IITA Section 1501(a)(30))

 - 3) Interest. "Interest" means "compensation for the use or forbearance of money". (See *Deputy v. du Pont*, 308 U.S. 488, 498 (1940).) Interest includes the amortization of any discount at which an obligation is purchased and is net of the amortization of any premium at which an obligation is purchased.

- 4) Intangible Expense. "Intangible expense" includes *expenses, losses, and costs for, or related to, the direct or indirect acquisition, use, maintenance or management, ownership, sale, exchange, or any other disposition of intangible property; losses incurred, directly or indirectly, from factoring transactions or discounting transactions; royalty, patent, technical, and copyright fees; licensing fees; and other similar expenses and costs.* (IITA Section 203(a)(2)(D-18), (b)(2)(E-13), (c)(2)(G-13) and (d)(2)(D-8))
- 5) Intangible Income. "Intangible income" means the income received or accrued by a person from a transaction that generates intangible expense for the other party to the transaction.
- 6) Intangible Property. "Intangible property" includes *patents, patent applications, trade names, trademarks, service marks, copyrights, mask works, trade secrets, and similar types of intangible assets.* (IITA Section 203(a)(2)(D-18), (b)(2)(E-13), (c)(2)(G-13) and (d)(2)(D-8))
- 7) Related Party. "Related parties" means persons disallowed a deduction for losses by section 267(b), (c) and (f) of the Internal Revenue Code, as well as a partner and its partnership and each of the other partners in that partnership.

c) Addition Modifications

- 1) Interest. Except as otherwise provided in this subsection (c)(1), every taxpayer must add back to its base income any deduction otherwise allowed in the taxable year for interest paid to a foreign person, to the extent the interest exceeds the amount of dividends received from the foreign person by the taxpayer and included in base income for the same taxable year. (IITA Section 203(a)(2)(D-17), (b)(2)(E-12), (c)(2)(G-12), and (d)(2)(D-7)) This addition modification shall not apply to an item of interest expense if:
 - A) The foreign person is subject in a foreign country or state, other than a state that requires mandatory unitary reporting by the taxpayer and the foreign person, to a tax on or measured by net income with respect to the interest. If the foreign person is a partnership, Subchapter S corporation or trust, the foreign person is subject to a tax on or measured by net income with respect to the interest to the extent that the interest is included in the tax base of a partner, shareholder or beneficiary who is subject to a tax on or measured by net income in a foreign country or state.
 - B) The taxpayer can establish, based on a preponderance of the evidence, both of the following:
 - i) the foreign person, during the same taxable year, paid, accrued, or incurred the interest to a person that is not a related party; and
 - ii) the transaction giving rise to the interest expense between the taxpayer and the foreign person did not have as a principal purpose the avoidance of Illinois income tax, and interest is paid

pursuant to a contract or agreement that reflects an arms-length interest rate and terms.

- C) The taxpayer can establish, based on clear and convincing evidence, that the item of interest relates to a contract or agreement entered into at arms-length rates and terms and the principal purpose for the payment is not federal or Illinois tax avoidance.
 - D) The taxpayer establishes by clear and convincing evidence that the adjustment would be unreasonable.
 - E) The taxpayer has received permission under Section 100.3390 of this Part to use an alternative method of apportionment allowing the deduction of the item.
- 2) Intangible Expenses. Except as otherwise provided in this subsection (c)(2), every taxpayer must add back to its base income any deduction otherwise allowed in the taxable year for intangible expenses incurred with respect to transactions with a foreign person, to the extent the intangible expenses exceed the amount of dividends received from the foreign person by the taxpayer and included in base income for the same taxable year. If a taxpayer incurs both interest and intangible expenses with the same foreign person, any dividends received from that foreign person shall be applied first against interest under subsection (c)(1) and only the excess (if any) of the dividends over the interest expenses shall be applied against intangible expenses under this subsection (c)(2). (IITA Section 203(a)(2)(D-18), (b)(2)(E-13), (c)(2)(G-13) and (d)(2)(D-8)) This addition modification shall not apply to an item of intangible expense if:
- A) The item arises from a transaction with a foreign person who is subject in a foreign country or state, other than a state that requires mandatory unitary reporting by the taxpayer and the foreign person, to a tax on or measured by net income with respect to the intangible income related to the item. If the foreign person is a partnership, Subchapter S corporation or trust, the foreign person is subject to a tax on or measured by net income with respect to the intangible income to the extent that the intangible income is included in the tax base of a partner, shareholder or beneficiary who is subject to a tax on or measured by net income in a foreign country or state.
 - B) The taxpayer can establish, based on a preponderance of the evidence, both of the following:
 - i) the foreign person during the same taxable year paid, accrued, or incurred the intangible expense to a person that is not a related party; and
 - ii) the transaction giving rise to the intangible expense between the taxpayer and the foreign person did not have as a principal purpose the avoidance of Illinois income tax, and is paid pursuant to a contract or agreement that reflects arms-length terms.

- C) If the taxpayer establishes, by clear and convincing evidence, that the adjustments are unreasonable.
- D) The taxpayer has received permission under Section 100.3390 of this Part to use an alternative method of apportionment, allowing the deduction of the item.

d) Subtraction Modifications

- 1) Interest Income of a Foreign Person. If interest paid to a foreign person is added back by a taxpayer under subsection (c)(1), the foreign person is allowed a subtraction for the amount of that interest included in its base income for the taxable year, net of deductions allocable to that income. The subtraction under this subsection (d)(1) shall not exceed the amount of the corresponding addition under subsection (c)(1). (IITA Section 203(a)(2)(CC), (b)(2)(V), (c)(2)(T), and (d)(2)(Q))
 - 2) Intangible Income of a Foreign Person. If intangible expense incurred in a transaction with a foreign person is added back by a taxpayer under subsection (c)(2), the foreign person is allowed a subtraction for the amount of the intangible income from that transaction included in its base income for the taxable year, net of deductions allocable to that income. The subtraction under this subsection (d)(2) shall not exceed the amount of the corresponding addition under subsection (c)(2). (IITA Section 203(a)(2)(CC), (b)(2)(V), (c)(2)(T), and (d)(2)(Q))
 - 3) Interest Income from a Foreign Person. A taxpayer who receives interest income from a foreign person is allowed a subtraction for the amount of that interest income, net of deductions allocable to that income. The subtraction allowed in this subsection (d)(3) for a taxable year may not exceed the amount of the addition modification for the taxable year under subsection (c)(1) for interest paid by the taxpayer to the foreign person. (IITA Section 203(a)(2)(DD), (b)(2)(W), (c)(2)(U), and (d)(2)(R))
 - 4) Intangible Income from a Foreign Person. A taxpayer who receives intangible income from a transaction with a foreign person is allowed a subtraction for the amount of the intangible income, net of deductions allocable to that income. The subtraction allowed in this subsection (d)(3) for the taxable year may not exceed the amount of the addition modification for the taxable year under subsection (c)(2) for intangible expenses incurred by the taxpayer in transactions with the foreign person. (IITA Section 203(a)(2)(EE), (b)(2)(X), (c)(2)(V), and (d)(2)(S))
- e) Unitary Business Groups. The provisions of this Section apply both to persons who are members of a unitary business group and to persons who are not members of a unitary business group because of the application of the 80-20 rule or of the prohibition in IITA Section 1501(a)(27) against including in a single unitary business group taxpayers using different apportionment formulas under IITA Section 304(a) through (d). In applying the provisions of this Section in the case of a unitary business group, any

reference to the "taxpayer" in this Section shall be deemed to refer to the unitary business group.

(Source: Added at 30 Ill. Reg. 18739, effective November 20, 2006)